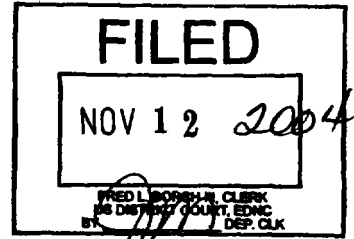


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:04-211-BO(1)



UNITED STATES OF AMERICA

v.

DAVID A. PASSARO

NOTICE OF INTENT TO ASSERT
PUBLIC AUTHORITY DEFENSE

Fed. R. Crim. P. 12.3

(Under Seal)

DAVID A. PASSARO, by and through undersigned counsel, hereby provides notice of his intent to assert the public authority defense. In accordance with Rule 12.3(a)(1), Mr. Passaro files this notice under seal.

Mr. Passaro asserts that he acted under the authority of the Central Intelligence Agency (CIA) and President George W. Bush, acting in his capacity as Commander-in-Chief. Fed. R. Crim. P. 12.3(a)(2). Mr. Passaro's [redacted] with the CIA lasted from December 2002 until September 2003. *Id.* From May of 2003 until July of 2003, Mr. Passaro served [redacted] with Special Operations Forces out of the Asadabad firebase, in Kunar Province, Afghanistan, where he acted on behalf of: [redacted] the CIA [redacted] at the Asadabad firebase; [redacted] the subsequent CIA [redacted] at the Asadabad firebase; [redacted] CIA advisor to the [redacted] at Asadabad; the CIA [redacted]; the CIA representative with whom Mr. Passaro contracted; the head of the CIA component with which Mr. Passaro contracted (presumably, either the Counterterrorist Center or the Office of Military Affairs); the CIA Director of Operations during the relevant time; George J. Tenet, Director of the CIA during the relevant

Unsealed 4/12/05
Redacted Copy

time period; and President George W. Bush, acting in his capacity as Commander-in-Chief. *Id.*

Respectfully submitted this 12th day of November, 2004.

Thomas P. McNamara

THOMAS P. McNAMARA
Federal Public Defender
N.C. State Bar No. 5099

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served upon:

JAMES A. CANDELMO
Assistant United States Attorney
Suite 800, Federal Building
310 New Bern Avenue
Raleigh, NC 27601-1461

by hand delivering a copy of same

This the 12th day of November, 2004.

Thomas P. McNamara

THOMAS P. McNAMARA
Federal Public Defender
N.C. State Bar No. 5099